

Complaint

Mr C complains that Specialist Motor Finance Limited ("SMF") unfairly entered into a hire-purchase agreement with him. He's said that the agreement was unaffordable.

Background

In July 2022, SMF provided Mr C with finance for a used car. The cash price of the vehicle was £22,795.00. Mr C paid a deposit of £654.17 and borrowed the remaining funds required to complete his purchase by entering into a hire-purchase agreement with SMF.

The amount lent was £22,140.83. The agreement had interest, fees and total charges of £11,806.97 (made up of interest of £11,796.97 and an option to purchase fee of £10). The total amount to be repaid of £11,879.80 was due to be repaid by 59 monthly instalments of £565.63 followed by a final monthly instalment of £575.63.

Mr C complained that the agreement was unaffordable and so should never have been provided to him. SMF didn't uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

Mr C's complaint was considered by one of our investigators. She didn't think that SMF had done anything wrong or treated Mr C unfairly. So she didn't recommend that Mr C's complaint should be upheld.

Mr C disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr C's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr C's complaint. I'd like to explain why in a little more detail.

SMF needed to make sure that it didn't lend irresponsibly. In practice, what this means is that SMF needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr C before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

SMF says it agreed to this application after Mr C provided details of his monthly income which it cross checked against information from credit reference agencies on the amount of funds received into his main account each month. It says it also carried out credit searches on Mr C which did show defaulted accounts.

However, it considered these to be historic on the basis that they all occurred more than a year prior to this application. The credit search also showed what it considered to be eleven good settled credit items. And when the amount owing plus a reasonable amount for Mr C's living expenses, calculated on statistical data, were deducted from his monthly income the monthly payments were affordable.

On the other hand, Mr C says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr C and SMF have said.

The first thing for me to say is that I don't think it was reasonable to rely on an estimate of Mr C's living costs given Mr C's existing indebtedness as well as the cost of credit and the term of the agreement. In these circumstances, I don't think that SMF's checks did go far enough.

As SMF didn't carry out sufficient checks, I've gone on to decide what I think SMF is more likely than not to have seen had it obtained further information from Mr C. Bearing in mind, the length of time of the agreement and the amount of the monthly payment, I would have expected SMF to have had a reasonable understanding about Mr C's regular living expenses as well as his income and existing credit commitments.

Given the back and forth that has taken place between the investigator Mr C, which has got into the minutiae of Mr C's full expenditure, I wish to be clear, I'm not going to use the information Mr C has provided to carry out a forensic analysis of whether his loan payments were affordable.

I say this particularly as Mr C's most recent submissions are being made in support of a claim for compensation and I need to keep in mind that any explanations he would have provided at the time are more likely to have been with a view to persuading SMF to lend, rather than highlighting any unaffordability.

Equally, what SMF needed to do was supplement the information it had on Mr M's credit commitments, with some further information on his actual living costs rather than estimates. And the information Mr C has provided does appear to show that when his committed regular living expenses and existing credit commitments were deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept it's possible that Mr C's circumstances were worse than he'd let on. For example, having looked at the bank statements it's clear that he was making regular buy now pay later ("BNPL") transactions and he believes that these should have been taken into account. However, these won't have shown up in the credit searches SMF carried out. Therefore, SMF won't have known about this.

Furthermore, Mr C would only have had to make these BNPL payments for a couple of months more at most. So, in any event, I don't think that it would be reasonable to consider these BNPL as commitment that Mr C would have to make over the course of the five years that he'd have to make payments to his SMF agreement for. I think that if Mr C had been questioned more about his BNPL purchases, it is highly unlikely (and almost certainly less likely than not) that he would have declared plans to continue making purchases in this way and that he'd therefore have similar payments to make over the term of this agreement.

I accept that it's possible – but by no means certain – that SMF might have reached a different conclusion had it obtained bank statements and seen this information. However, bearing in mind checking bank statements wasn't the only way for SMF to have found out more about Mr C's actual living costs – it could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements Mr C has now provided us with.

So I don't think that SMF could reasonably be expected to have known about the nature and extent of any additional spending, which Mr C is now relying on and which I'm now able to see with the benefit of hindsight.

Overall and having carefully considered everything, given what I think further enquiries into Mr C's living expenses are likely to have shown SMF, while I don't think that SMF's checks before entering into this hire purchase agreement with Mr C did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped SMF from providing these funds, or entering into this agreement.

I'm therefore satisfied that SMF didn't act unfairly towards Mr C when it agreed to provide the funds. And I'm not upholding this complaint. I appreciate that this will be disappointing for Mr C. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 June 2024.

Jeshen Narayanan
Ombudsman